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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,915	10/16/2003	Roger N. Chauza	CHAU-0101US	7480
31782	7590	01/13/2006	EXAMINER	
CHAUZA & HANDLEY, L.L.P. PO BOX 140036 IRVING, TX 75014			MCMAHON, MARGUERITE J	
			ART UNIT	PAPER NUMBER
			3747	
DATE MAILED: 01/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/686,915

Applicant(s)

CHAUZA ET AL.

Examiner

Marguerite J. McMahon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-11, 13-15 and 21-27 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

Claims 7 and 12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/21/05.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 13-15, and 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pacheco (4,932,628) in view of Adams et al (5,637,226). Note an engine performance demonstration unit, comprising a mobile carrier 20, an engine mounted to said mobile carrier, and a visual display 80 for displaying engine characteristics. Pacheco shows everything except an aftermarket apparatus for use with said engine to affect the operation of said engine and means for switching said aftermarket apparatus into operation and out of operation while said engine is running to thereby affect said engine, and specifically employing visual displays, which show the flow rate of fuel to the engine and a parameter related to a pollutant emitted by the engine, a catalytic converter and a load that are switchable into and out of operation, and employing a programmed processor.

Adams et al teach that it is old in the art to employ an aftermarket apparatus (i.e. magnetic fuel treatment device) for use with said engine to affect the operation of said engine comprising magnets 7 and 8; and means for switching said aftermarket apparatus into operation and out of operation to thereby affect said engine accordingly (see column 4, lines 6-25, which cite that both fuel efficiency and emissions are improved with the magnetic device, as opposed to without the magnetic device).

It would have been obvious to one having ordinary skill in the art to modify Pacheco by employing an aftermarket apparatus for use with said engine to affect the operation of said engine comprising magnets; and means for switching said aftermarket apparatus into operation and out of operation to thereby affect said engine accordingly. Note that it is conventional to employ testing devices for various aspects of engine operation, such as measuring the flow rate of fuel to the engine, and monitoring the exhaust for pollutant levels. It would have been obvious to one having ordinary skill in the art to include these indicators, in order to further test engine efficiency. Similarly, it would have been obvious to include a test for the efficiency of a catalytic converter, which is a conventional engine element, and to test the load, which is a conventional dynamometer, well known in the engine testing art. In addition, it would have been obvious to provide a programmed processor to perform the functions of the unit, such as switching the device in and out of operation, and monitoring, storing and simultaneously displaying engine performance parameters, as well as calculating differences between the results, since it has been held that broadly providing a

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mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

In addition, it would have been an obvious matter of design choice to utilize the device while the engine is still running, since the device would function in the same way without any benefit being gained whether the engine was or was not running during the switching operation.

With respect to claims 10 and 11, it is noted that simply moving the magnets into and out of contact with the fuel line is considered to be within the purview of one of ordinary skill in the art, in order to determine the effect of the magnets on the combustion characteristics.

With respect to claim 26, the recitation of adapting the mobile carrier for towing is not deemed to be an inventive step, or in other words, it would have been obvious to one of ordinary skill in the art, since providing mechanical modification to render the mobile carrier suitable for towing is considered to be within the purview of one of ordinary skill in the art.

Allowable Subject Matter

Claims 8-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 10/31/05 have been fully considered but they are not persuasive. Applicant argues that Adam et al does not show a switch mechanism.

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Applicant appears to be reading more into the meaning of the term “switch mechanism” than is actually there. A switch mechanism is a means of switching between two different states. In the context of the claims, it is a means of switching between a state in which the magnets are in contact with the fuel line and are affecting the combustion, and a state in which the magnets are not in contact with the fuel line, and therefore are not affecting the engine combustion. While it is true that Adam et al does not explain how the switch between these two states takes place, it is inherent that a switch takes place. Otherwise, Adam et al would not be able to provide the information about the various output characteristics of an IC engine burning treated fuel to those in an IC engine burning untreated fuel. Even if Adam et al relies upon two different engines, as Applicant suggests is possible, or if Adam et al requires that the fuel line be removed in order to switch from mode to another, as Applicant also suggests is possible, this would still read on the claims, with the caveat that the limitation “while the engine is still running” would not necessarily be met. However, this limitation does not provide any benefit to the functioning of the device, and is therefore considered to be a matter of design choice, as explained in the above rejection.

Applicant also argues that the position taken by the examiner, namely that providing mechanical modification to render the mobile carrier of Pacheco suitable for towing is considered to be within the purview of one of ordinary skill in the art is not a valid position is unconvincing. Pacheco has wheels 102, 104, not castors. There is no mention of castors in Pacheco. The towing technology is old and well known, and there

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is no reason why one skilled in the art could not employ the conventional technology of towing to modify the mobile device of Pacheco to render it suitable for towing.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marguerite J. McMahon whose telephone number is 703-308-1956. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yuen Henry can be reached on 703-308-1946. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MARGUERITE MCMAHON
PRIMARY EXAMINER